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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/091,327

03/05/2002

David Scott Miller

006593-1960

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33375

7590

03/19/2004

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EXAMINER

GIBSON, RANDY W

ART UNIT

PAPER NUMBER

2841

DATE MAILED: 03/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/091,327

Applicant(s)

MILLER ET AL.

Examiner

Randy W. Gibson

Art Unit

2841

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Response to Arguments***

1. Applicant's arguments filed February 27, 2004 have been fully considered but they are not persuasive with respect to some of the claims.

Applicant makes the following argument:

"The action asserts that 'it appears that the scale of Gesuita et al. was intended to work equally well with any commercially available web based interface.' Applicants respectfully traverse this assertion, as Gesuita et al. lacks any support for this assertion, and the assertion is completely at odds with the admission that Gesuita et al. does not suggest a web user interface. [emphases added]"

The applicant's statement is a *non sequitor* argument. Just because Gesuita et al does not expressly state by name what kind of software their PC uses, it does not logically follow that they must use none. Simply because the owner's manual of a car does not expressly name a certain brand of motor oil, it does not logically follow, then, that a generic brand of motor oil at the store -- which the label states has been formulated for use in any conventional automobile -- cannot be used in that particular car unless the owner's manual expressly mentions that brand of oil by name. Likewise, one name brand of gasoline should work just as well in a particular car as any other name brand of gasoline even if the owner's manual does not expressly list each and every name brand on the market. Likewise, it does not logically follow that a conventional software product designed to run on practically any generic PC, such as an off-the-shelf web browser,

could not be used on the PC disclosed in the Gesuita et al reference unless Gesuita expressly states so. A software product, such as a web browser, that was so machine dependent that it would only work on specific brands of PC's would not be marketable (no one would want to buy it since there would be no assurance that it would work on their generic PC). Applicant seems to be basically arguing that it would have been impossible for the PC disclosed in Gesuita et al to have run a conventional PC based web browser even if they wanted to, yet applicant gives no factual or legal basis for such an assertion. What exactly does the applicant think would prevent the PC of Gesuita et al from running any conventional software product designed to run on any conventional PC, as the examiner previously asserted? It would appear that the applicant has misunderstood the examiner's rejection.

Applicant's bare statement that neither Gesuita et al nor Luke "mention the use of a web server, web browser or web page data" is not persuasive by itself since the examiner had already conceded this point. The plain language of the statute itself requires that the art must be considered "as a whole", not piecemeal by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); and, *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant also makes the argument that "[t]ypical PCs are not configured to include a web server that serves web page data to be displayed on the screen of the PC itself." First of all, this statement does not seem to be factually accurate and the applicant has cited no evidence to support it. Second of all, this argument is not

persuasive with respect to claim 1 since these limitations do not expressly appear in that claim; claim 1 mentions these limitations only in the alternative, which means that any combination of the prior art that does "one or both" of displaying web based data on the resident PC or the remote PC would literally meet claim 1 as worded (claim 23 is discussed below).

The applicant makes the argument that claim 6 "specifically recites that the controller and web server are operable together in at least one mode to serve similar web page data to both the resident interface link and the remote interface link for enabling remote viewing of on-going scale operations in real time. Gesuita et al. does not teach that the PC 2 sends the same GUI data to a remote location that the PC 2 sends to its own display screen 3. Luke also fails to teach this feature." Applicant makes similar remarks in response to the rejection of claim 23. Once again, it is unclear exactly why applicant is repeating what he has already stated about what Gesuita et al and Luke do not show since the examiner had already conceded this point. It appears that what applicant is really trying to do is to challenging the examiner's taking of official notice that "remote troubleshooting of a network based computer from another remote computer (I.E.: the "help desk") has been known in general for at least a decade". In support of the examiner's assertion, the examiner cites Perholtz et al (US # 5,732,212) and Anderson et al (US # 6,633,905). These are rebuttal references cited to support the facts asserted in the examiner's taking of official notice in the previous office action so their inclusion does not constitute a new grounds of rejection; nevertheless, they are new references so this office action is a non-final rejection. While these new references

do not prove that remote display of data which also appears on another PC was known "for at least a decade", they do prove both collectively and individually that this feature was known prior to applicant's filing date.

The applicant concludes with the following argument:

"claim 24 does not seek to patent the servicing of scales via a remote computer *per se*, but instead focuses on a specific method involving the aforementioned steps. The examiner's analysis fails to address the specific steps, including the identification of a network address of the scale, the use of a web browser to remotely connect to the scale by pointing the browser to the identified address, receiving a login web page and then logging in to the scale."

The examiner notes that if a method of remotely accessing a PC controlled scale did not identify the "network address of the scale", then how else could one remotely access it via a network? This functional feature would necessarily be included as part of the conventional "Icestorm" web browser that the applicant purchased from Wind River Systems, Inc., mentioned on page 3 of the applicant's written description. Without a "network address", one would be accessing machines on the network unpredictability and at random (more likely, without an address, the web browser would simply return an error indication page to the PC attempting remote access since the programmer of the web browser would have undoubtedly thought of this one. If the applicant is unconvinced, then the examiner suggests that the applicant should try the following experiment: open the web browser on one's own PC and enter in a nonsense address

such as "qwerty" and see what happens. Obviously a web browser needs a valid network address in order to be operative). This step seems inherent and its inclusion in the claim seems redundant since it would be impossible to remotely access a PC based via the internet by any other method known to the examiner. See *Ex parte Levy*, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990); and, *MPEP* § 2112.

Likewise, the step of "the use of a web browser to remotely connect to the scale by pointing the browser to the identified address", does not seem to add anything of substance to the claim since exactly what else would a web browser do given an internet address? This limitation seems inherent to the idea of accessing a PC based device via the internet. Likewise the idea of "receiving a login web page" seems inherently included in the idea of logging on remotely (how else would one log on to a remote computer? The examiner suggests that the applicant try to log on to "Yahoo!", "Washingtonpost.com", or any other number or web sites that require a log-in ID if the applicant doubts that this is at least a well known feature in the art). The idea of logging on to a computer that is being accessed remotely would have been obvious to the ordinary practitioner in the art from the standpoint that one would not want just any stranger off the street to start to control the operations of the factory machines being controlled by the PC based system of Gesuita et al. See Figure 14.4(b) on page 503 of *Systems Architecture* by Stephen Burd, for example.

Based on the applicant's arguments it appears that the applicant is attempting to express the novelty of the claimed invention by merely claiming features that come already included with the "Icestorm" web browser software from Wind River Systems,

Art Unit: 2841

Inc. which the applicants themselves admit that they did not invent. Therefore, the examiner makes a request that the applicant supply a copy of the user's manual of the "Icestorm" web browser, and the user's manual of any other web browser which the applicant experimented with, under the authority granted by 37 CFR 1.105; specifically 37 CFR §§ 1.105 (a)(1)(iv), 1.105(a)(1)(v), & 1.105(a)(1)(vi). See MPEP § 704.10 et seq.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gesuita et al (US # 6,566,613 B1) in view of Luke (US # 6,580,037 B1), Anderson et al (US # 6,633,905 B1), Perholtz et al (US # 5,732,212), and applicant's own admission of prior art. Gesuita et al discloses a scale which can be controlled or assisted remotely via the Internet from a personal computer (Col. 4, lines 8-35; Col. 9, lines 30-58., Col. 10, lines 38-58). Gesuita et al state that they have a graphic user interface that includes icons, but they stop short of suggesting a "web user interface" for their display. However, it is noted from applicant's specification that the software they use is conventional, off-the-shelf software -- the invention apparently lies in the way that the



Art Unit: 2841

conventional software is being used. Since applicant has admitted that the web page interface software that he is using is conventional, and since it appears that the scale of Gesuita et al was intended to work equally well with any commercially available web based interface (since it is PC controlled, there is no compelling reason why it would not be compatible with any off-the-shelf commercial software designed for a generic PC), it would have been obvious to the ordinary practitioner to use any conventional web based interface, such as "Icestorm" web browser from Wind River Systems, Inc., in the scale of Gesuita et al motivated by its art recognized suitability for its intended use on a conventional PC. See *MPEP* §§ 2144.06 & 2144.07.

Gesuita et al suggest the idea of remote assistance, but stop short of suggesting having a remote technician log onto the scale controller as stated by claims 24-33. However, the examiner notes that this type of remote troubleshooting of a network based computer from another remote computer (I.E.: the "help desk") has been known in general as shown by the example Anderson et al (note that Perholtz et al is incorporated by reference into Anderson at column 1, lines 39-48), and the reference to Luke expressly suggests using this type of remote servicing for computerized scales (Col. 3, lines 16-68). It would have been obvious to the ordinary practitioner to use conventional remote access and remote assistance software in the device of Gesuita et al motivated by its art recognized suitability for its intended use. See *MPEP* §§ 2144.07.

The preamble recitation that the scale is intended to determine a price for an item is not deemed to have any patentable weight in this context. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or

Art Unit: 2841

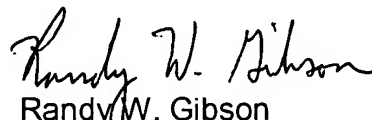
the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

### **Conclusion**

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randy W. Gibson whose telephone number is (571) 271-2103. The examiner can normally be reached on Mon-Fri., 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David S Martin can be reached on (571) 272-2107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Randy W. Gibson  
Primary Examiner  
Art Unit 2841